



[Billing Code 7709-02-P]

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4041A, and 4281

RIN 1212-AB28

Multiemployer Plans; Electronic Filing Requirements

AGENCY: Pension Benefit Guaranty Corporation

ACTION: Proposed rule

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is proposing to amend its regulations to require electronic filing of certain multiemployer notices. These changes would make the provision of information to PBGC more efficient and effective.

DATES: Comments must be submitted on or before [insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212-AB28, may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- E-mail: reg.comments@pbgc.gov.
- Fax: 202-326-4112.
- Mail or Hand Delivery: Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB28). Comments received, including personal information provided, will be posted to www.pbgc.gov. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion

(klion.catherine@pbgc.gov), Assistant General Counsel for Regulatory Affairs, or Donald McCabe (mccabe.donald@pbgc.gov), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This proposed rule is part of PBGC’s ongoing implementation of the Government Paperwork Elimination Act and is consistent with the Office of Management and Budget’s directive to remove regulatory impediments to electronic transactions. The proposal builds in flexibility to allow PBGC to update the electronic filing process as technology advances.

PBGC's legal authority for this regulatory action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA; section 4041A(f)(2), which gives

PBGC authority to prescribe reporting requirements for terminated plans; section 4245(e)(4), which authorizes PBGC to issue regulations on notices related to insolvency and resource benefit levels; and section 4281(d), which directs PBGC to prescribe by regulation the notice requirements to plan participants and beneficiaries in the event of a benefit suspension under an insolvent plan.

This proposed rule does *not* involve any conforming amendments reflecting the Multiemployer Pension Reform Act of 2014 (MPRA).¹ PBGC expects to address such changes in a future rulemaking.

Major Provisions of the Regulatory Action

This proposed rule would require the following notices to be filed electronically with PBGC: notices of termination under part 4041A, notices of insolvency and of insolvency benefit level under parts 4245 and 4281, and applications for financial assistance under part 4281.

Background

The Pension Benefit Guaranty Corporation (PBGC) is a federal corporation created under the Employee Retirement Income Security Act of 1974 (ERISA) to guarantee the payment of pension benefits earned by more than 41 million American workers and retirees in nearly 24,000 private-sector defined benefit pension plans. PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans.

The multiemployer program protects benefits of approximately 10 million workers and retirees in approximately 1,400 plans. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry such as

¹ Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, enacted December 16, 2014.

construction or trucking, where workers move from employer to employer on a regular basis. Under PBGC's multiemployer program, when a plan becomes insolvent, PBGC provides financial assistance directly to the insolvent plan sufficient to pay guaranteed benefits to participants and beneficiaries, and the reasonable and necessary administrative expenses of the insolvent plan.

Multiemployer plan notices

ERISA section 4041A provides for two types of multiemployer plan terminations: mass withdrawal and plan amendment. A mass withdrawal termination occurs when all employers withdraw or cease to be obligated to contribute to the plan. A plan amendment termination occurs when the plan adopts an amendment that provides that participants will receive no credit for service with any employer after a specified date, or an amendment that makes it no longer a covered plan. Unlike terminated single-employer plans, terminated multiemployer plans generally continue to pay all vested benefits out of existing plan assets and withdrawal liability payments. PBGC's regulation on Termination of Multiemployer Plans (29 CFR Part 4041A) implements these provisions, among other things by requiring the plan sponsor of a terminated multiemployer plan to file with PBGC a notice of termination containing basic information necessary to alert PBGC to possible demands on the multiemployer insurance program.

ERISA section 4245(e) requires two types of notice:

- Notice of insolvency, which states a plan sponsor's determination that the plan is or may become insolvent.
- Notice of insolvency benefit level, which states the level of benefits that will be paid during an insolvency year.

Section 4245(e)(4) provides that these notices are to be given in accordance with rules promulgated by PBGC. PBGC's regulation on Notice of Insolvency, 29 CFR Part 4245,

establishes the procedure for complying with these notice requirements. The regulation allows a single notice of insolvency to cover more than one plan year, thereby generally permitting plan sponsors to file only a single notice (a notice of insolvency benefit level) for any future year. The regulation also prescribes, among other things, the manner in which the notices must be given. The recipients of these notices include PBGC, in addition to other parties.

PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) implements the requirements of ERISA section 4281. The regulation prescribes rules under which plan sponsors must:

- Provide notices to PBGC and to participants and beneficiaries that a plan is, or will be, insolvent (§§ 4281.43 and 4281.44).
- Provide notices of insolvency benefit level to PBGC and to participants and beneficiaries who are in pay status or may reasonably be expected to enter pay status during the year (§§ 4281.45 and 4281.46).
- Submit an application to PBGC for financial assistance if a plan is, or will be, unable to pay guaranteed benefits when due (§ 4281.47).

Mandatory electronic filing

Section 4000.3 of PBGC's regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR Part 4000) already requires electronic filing of premium declarations under part 4007 (Payment of Premiums) and information required under part 4010 (Annual Financial and Actuarial Information Reporting).

Proposed Regulatory Changes

PBGC is proposing to require electronic filing of the following multiemployer plan filings:

- Notices of termination under part 4041A.
- Notices of insolvency and of insolvency benefit level under part 4245.

- Notices of insolvency and of insolvency benefit level under part 4281 (following mass withdrawal).
- Applications for financial assistance under part 4281 (following mass withdrawal).

PBGC would grant case-by-case exemptions to the electronic filing requirement in appropriate circumstances for filers that demonstrate good cause for exemption. PBGC believes that requiring electronic filing for these notices would result in benefits for both the public and the government.

Electronic filing would simplify the filing process for the public by building in all required and optional fields and including readily accessible guidance in the application. This is expected to reduce the need to contact PBGC for assistance. PBGC estimates that the amendments in the proposed rule would result in a total savings in administrative burdens for the public of 25 percent (about 22 hours and \$99,000 annually).

Electronic filing would also result in greater efficiencies for the government. Currently, documents submitted by filers need to be manually uploaded to electronic depositories. With electronic filing, those documents would be automatically uploaded. Electronic filing would also save the government time by reducing the need to provide assistance to filers. It would also improve the government's recordkeeping, records retrieval, and records archiving process by eliminating the possibility of missing or lost paper files due to human error.

Moreover, the PBGC expects electronic filing will improve the government's ability to protect potential personally identifiable information (PII), or otherwise sensitive information, since only pre-approved personnel will have access to PBGC's electronic records systems, and limited access will be approved for officials of pension plans.

PBGC is not proposing at this time to require electronic filing of notices of benefit reduction and of restoration of benefits under part 4281. PBGC may in the future require that other multiemployer filings also be made electronically.

Applicability

The amendments to all these regulations would be applicable for filings made on or after January 1, 2016.

Compliance with Rulemaking Requirements

Executive Order 12866 “Regulatory Planning and Review” and Executive Order 13563 “Improving Regulation and Regulatory Review”

PBGC has determined in consultation with the Office of Management and Budget that this rule is not a “significant regulatory action” under Executive Order 12866. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Section 3(f)(1) of Executive Order 12866, a regulatory action is economically significant if “it is likely to result in a rule that may . . . [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.” PBGC has determined that this proposed rule does not cross the \$100 million threshold for economic significance and is not otherwise economically significant (see discussion above).

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is the same criterion PBGC uses in other aspects of its regulations involving small plans, and is consistent with certain requirements in Title I of ERISA and the Internal Revenue Code, as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.

Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 § CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of the proposed amendments to the reportable events regulation.

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. Very few multiemployer plans are small.² And, as discussed above, the amendments would not have a significant economic impact on entities of any size. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 would not apply. PBGC invites public comment on this burden estimate.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The collection of information in Part 4041A is approved under control number 1212-0020 (expires June 30, 2017). PBGC estimates that there will be 10 respondents each year and that the total annual burden of the collection of information will be about 17 hours and \$3,850.00 (about 2 hours and \$385 per respondent).

The collection of information in Part 4245 is approved under control number 1212-0033 (expires June 30, 2017). PBGC estimates that there will be one respondent each year and that the total annual burden of the collection of information will be about \$1,550.

The collection of information in Part 4281 is approved under control number 1212-0032 (expires July 31, 2017). PBGC estimates that there will be 324 respondents each year and that

² According to data from 2012 5500 filings, only 32 of 1,407 active plans have fewer than 100 participants. Further, PBGC is not aware of a multiemployer plan that was established and covered by ERISA that was not initially a large plan. Generally it is only after a plan terminates and employers withdraw from the plan that a plan might reduce in size to fewer than 100 participants.

the total annual burden of the collection of information will be about 61 hours and \$309,000 (about \$950 per respondent).

Copies of PBGC's requests will be posted at <http://www.pbgc.gov/res/laws-and-regulations/information-collections-under-omb-review.html> and may also be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW., Washington, DC 20005, 202-326-4040. PBGC is proposing to make changes for the following information collections: notices of termination; notices of insolvency; notices of insolvency benefit level; and applications for financial assistance.

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at OIRA_DOCKET@omb.eop.gov or by fax to (202) 395-6974. Although comments may be submitted through [insert date 60 days after date of publication in Federal Register], the Office of Management and Budget requests that comments be received on or before [insert date 30 days after date of publication in the Federal Register] to ensure their consideration. Comments may address (among other things) –

- Whether each proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of each proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of each collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4281

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

For the reasons given above, the PBGC is proposing to amend 29 CFR parts 4000, 4041A, and 4281 as follows.

PART 4000--FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

2. In § 4000.3, add paragraph (b)(3) to read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) * * *

(3) When making filings to PBGC under parts 4041A, 4245, and 4281 of this chapter (except for notices of benefit reductions and notices of restoration of benefits under part 4281), you must submit the information required under these parts electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

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PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

3. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

4. In § 4041A.11, add new paragraph (d) to read as follows:

§ 4041A.11 Requirement of notice.

(d) *How and where to file.* Filings to PBGC under this subpart must be submitted in accordance with the rules in subpart A of part 4000 of this chapter. See § 4000.4 of this chapter for information on where to file.

§ 4041A.25 [Amended]

5. In § 4041A.25, amend paragraph (d) by removing the words "of the PBGC" and adding in their place "to the PBGC".

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

6. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D) and 1441.

7. In § 4281.3, revise paragraph (b) to read as follows:

§ 4281.3 Filing and issuance rules.

* * * * *

(b) *Method of issuance.* For rules on method of issuance to interested parties, see § 4281.32(c) for notices of benefit reductions, § 4281.43(e) for notices of insolvency, and § 4281.45(c) for notices of insolvency benefit level.

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8. In § 4281.43, revise paragraph (a) to read as follows:

§ 4281.43 Notices of insolvency.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall file with the PBGC and issue to plan participants and beneficiaries notices of insolvency. Once notices of insolvency have been filed with the PBGC and issued to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

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9. In § 4281.47, revise paragraph (b) to read as follows:

§ 4281.47 Application for financial assistance.

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(b) *When, how, and where to apply.* When the plan sponsor determines a resource benefit level that is less than guaranteed benefits, it shall apply for financial assistance at the same time that it submits its notice of insolvency benefit level pursuant to § 4281.45. When the plan sponsor determines an inability to pay guaranteed benefits for any month, it shall apply for financial assistance within 15 days after making that determination. Application to the PBGC for financial assistance shall be made in accordance with the rules in subpart A of part 4000 of this chapter. See § 4000.4 of this chapter for information on where to apply.

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Issued in Washington, D.C., this 30th day of March 2015.

Judith R. Starr
General Counsel

Pension Benefit Guaranty Corporation

[FR Doc. 2015-07602 Filed: 4/2/2015 08:45 am; Publication Date: 4/3/2015]